

# Committee on Resources

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NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE  
ON THE "MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 2003"  
BEFORE THE  
COMMITTEE ON RESOURCES  
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS  
U.S. HOUSE OF REPRESENTATIVES  
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Mr. Chairman and Members of the Subcommittee, I am Dr. Rebecca Lent, Deputy Assistant Administrator for Regulatory Programs at the National Oceanic and Atmospheric Administration (NOAA). Thank you for inviting me to testify before you today on H.R. 2693 and other Marine Mammal Protection Act (MMPA) reauthorization issues. Additionally, special thanks to you and your staff for your hard work and dedication to the improvement of marine mammal conservation and management policies in the development of H.R. 2693.

NOAA Fisheries administers the MMPA, the principal Federal legislation that guides marine mammal protection and conservation policy in U.S. waters, in conjunction with the U.S. Fish and Wildlife Service (FWS). The MMPA provides NOAA with conservation and management responsibility for more than 140 stocks of whales, dolphins, porpoises, seals, and sea lions.

The Administration strongly supports the conservation and management principles embodied in the MMPA and the need to reauthorize this important legislation. As you know, the Department of Commerce and NOAA have worked closely over the past three years with the Department of the Interior, Department of Defense, Marine Mammal Commission, and others to develop a sound Administration proposal to reauthorize the MMPA. In February 2003, we transmitted this Administration bill to Congress. My testimony today includes NOAA Fisheries' views on H.R. 2693, as well as a description of some elements of the Administration's MMPA reauthorization bill that we hope the Subcommittee will take into further consideration. I would like to begin my testimony today, however, by discussing an emerging issue that has recently risen to the forefront of the MMPA reauthorization discussion - that of scientific research permits and the process of issuing those permits.

## Scientific Research Permitting Process

NOAA Fisheries is a science-based agency. We conduct marine mammal research and stock assessments at all of our regional science centers and we help fund and support marine mammal research projects conducted by many scientists outside the agency. Our Marine Mammal Permits, Conservation and Education Division is part of our headquarters Office of Protected Resources. This Division issues scientific research permits to conduct marine mammal and endangered species research by all scientists.

There is a distinction between permits that are for activities directed at marine mammals and incidental take

authorizations for activities that may indirectly or incidentally affect marine mammals through activities such as seismic exploration or naval training exercises. Sections 101 and 104 of the MMPA lay out different authorization processes for activities involving incidental and directed impacts. It is logical to handle these processes separately, since the intent and type of impact associated with incidental vs. directed activities is different. Activities that are directed at marine mammals involving scientific research, for instance, by their nature are repetitive. Incidental activities involve indirect, unavoidable impacts on marine mammals that often must be looked at on a different scale. We are also working to improve the information underlying such permits. For example, we have held several meetings with stakeholders to ascertain how marine mammal stock assessments can be improved to meet regulatory compliance needs.

It is also very important to recognize the distinction between scientific research permits that pertain to marine mammals that are not listed as threatened or endangered under the Endangered Species Act (ESA) and those permits that address ESA-listed species. Permits and General Authorizations that deal with non-ESA-listed marine mammals, such as bottlenose dolphins, are almost always issued in a timely manner and are generally not controversial. We feel strongly that these permits present no problems that need to be addressed during reauthorization.

The challenges that we have had in recent years with issuing scientific research permits are related to endangered marine mammals, such as right whales, other large whales, and Steller sea lions. For these ESA-listed species, we need to meet our statutory obligations under the ESA by conducting ESA Section 7 analyses. In addition, the potential impacts of the research are analyzed under the National Environmental Policy Act (NEPA). While we conduct NEPA analyses for non-listed species, the analyses and corresponding documents are more complex when the species in question is listed under the Endangered Species Act. In order to consider the cumulative and synergistic impacts of all the research conducted on these species, it might be necessary to prepare an Environmental Assessment or full Environmental Impact Statement. This has presented the agency with significant challenges.

For example, there has been much criticism of the time it has taken to issue a right whale research permit for the New England Aquarium. NOAA Fisheries must review research permits involving right whales with particular scrutiny because these animals are critically endangered. In addition to the New England Aquarium's proposed research, there have been a number of other right whale research proposals that have been submitted to NOAA Fisheries, some of which contained a number of controversial research activities. The Permits Division staff have been working closely with NOAA Fisheries marine mammal scientists and with the Marine Mammal Commission to determine how best to address these issues. The intent is to complete all the necessary analyses under Section 7 and NEPA, so that permit decisions can be made in advance of the upcoming fall/winter field season in the Atlantic.

In the interim, NOAA Fisheries has made arrangements to accommodate most of the New England Aquarium's research in U.S. waters under existing scientific research permits such that field opportunities are not lost. In addition, this and other research critical to the protection of right whales, including disentanglement efforts and aerial surveys needed for the Early Warning System, have been continuing under existing permits.

In addition, on more than one occasion, we have been able to expedite scientific research applications for ESA-listed species of marine mammals on very short notice when valuable research opportunities would otherwise be lost. For instance, we recently processed an application for a study involving acoustic research on endangered sperm whales within 42 days (including the statutorily mandated 30-day public comment period) of receipt of the complete application, well under the typical 225-day timeframe allotted for processing this type of permit.

In summary, we face significant challenges in addressing endangered marine mammal research permits because of the sometimes complex and time-consuming ESA and NEPA requirements and the importance of the analysis when the research, which sometimes involves direct contact with the animal, is conducted on highly endangered animals. We attempt to address these requirements as thoroughly as possible to ensure that we can use information from the analyses as the basis for sound decision-making, as well as to prevent legal vulnerabilities that may further delay the permitting process. Additionally, addressing these requirements enables us to integrate public input into our analyses. In the future, we plan to develop programmatic NEPA and ESA documents that would help front-load these processes, and allow a much more streamlined permitting process. However, we see no need to make changes in the MMPA scientific research permitting process, because that process works well.

NOAA Fisheries has been criticized over the time it takes to process requests for authorizations to take marine mammals incidental to activities they are undertaking. We believe, however, that we have a good record of working with a varied group of interests, including seismic operators conducting oil and gas-related activities, military agencies, state transportation agencies, and others, to authorize incidental taking, when they come to us early in their project planning. The Act establishes various standards that must be met, which require a variety of findings to be made. When the marine mammals to be taken are listed under the Endangered Species Act, that law applies as well. In each case, we initiate public review and some level of NEPA analysis. For projects that are likely to take marine mammals, we encourage potential applicants to inquire early about our procedures for authorizing incidental takings as they are planning these projects.

#### H.R. 2693

##### Definition of Harassment

NOAA Fisheries is pleased that the need to clarify the definition of harassment has been addressed in H.R. 2693. We have experienced difficulties interpreting, implementing, and enforcing the current harassment definition and have sought to address these problems in the Administration's reauthorization bill in a similar manner as H.R. 2693.

The current definition of harassment impedes NOAA's ability to adequately enforce the MMPA's take provisions. As the definition is currently written, only those acts involving "pursuit, torment, or annoyance," terms that are undefined in the MMPA, can be addressed. Additionally, these terms in the current definition establish a difficult two-tiered standard that the agency must meet before it can prosecute anyone who takes a marine mammal by harassment. First, the agency must prove that an individual act was one of "pursuit, torment, or annoyance." Then, the agency must prove that the act has the potential either to injure or disturb a marine mammal. We support H.R. 2693's deletion of the terms "pursuit, torment, or annoyance" in the current definition, eliminating the two-tiered standard. We also support the clarification that harassment can be "any act." The Administration bill proposes the same change, and we feel this will aid enforcement of the harassment standard.

We support H.R. 2693's inclusion of the second tier of the Level B harassment definition similar to the Administration's reauthorization bill, which makes explicit that activities that are directed at individual or groups of marine mammals that are likely to disrupt important marine mammal behaviors constitute harassment. Members of the public and commercial operators who intentionally interact with wild marine mammals either by boat, in the water, or on land can disturb the natural behavior of the animals. They can also do a great disservice to these animals over time by habituating them to humans and vessels. In addition, humans who attempt to closely approach, chase, swim with, or touch wild marine mammals place themselves at risk, since wild animals are unpredictable and can inflict serious injury if threatened or afraid.

We also conceptually support the proposed changes H.R. 2693 would make to Level A and B harassment. The current definition of harassment is broad and lacks precision, thereby failing to create a clear threshold for acts that do and do not constitute harassment. As a result, it is difficult for the agency to prioritize its resources to deal with the types of harassment that have the most negative effects on marine mammals. With regard to the changes H.R. 2693 would make to Level A harassment, we ask for clarification of the intent of the term "probability to injure." Specifically, we are concerned that since "probability" often implies that a particular outcome is more likely to occur than not, this standard may create too high a threshold for an act to constitute Level A harassment and make it difficult for the agency to regulate some acts that may have important negative impacts on marine mammals. We support the intent of the bill's proposed changes to the current definition of Level B harassment. These changes will help NOAA Fisheries and the regulated community focus on activities that result in biologically significant, harmful effects rather than those activities that result in de minimus impacts on marine mammals. Overall, the proposed definition of harassment contained in H.R. 2693 is similar in intent to the one in the Administration's proposal. Both proposed definitions will result in more meaningful protections for marine mammals and apply a clearer standard of harassment to the entire regulatory community.

We are concerned about the "potential to disturb" threshold set forth in the second clause of the proposed harassment definition. The agencies that developed the Administration's proposed definition rejected this language as being overly broad, inasmuch as it would include even a very remote possibility that disturbance might occur. We believe that the standard included in the Administration's proposal, "disturbs or is likely to disturb," provides a more appropriate delimitation concerning what activities should be covered under this part of the harassment definition.

## Incidental Takings of Marine Mammals

H.R. 2693 would amend several parts of the current legislative requirements that authorize incidental take (Section 101(a)(5) of the MMPA). Incidental takes are those that are unintentional and may occur during otherwise lawful activities.

Under the present scheme, NOAA Fisheries is directed to authorize the takes of small numbers of marine mammals if the takings will have no more than a negligible impact on those marine mammal species or stocks, and will not have an unmitigable adverse impact on subsistence harvests of these species. Through regulation, NOAA Fisheries has defined "negligible impact" as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

H.R. 2693 would delete the "small numbers" standard in Section 101(a)(5) of the MMPA and would no longer require that activities authorized under this section be limited to a "specified geographic region." These proposed amendments do not change the applicant's requirement of having to show that their activities are having a negligible impact on the marine mammal species and populations before they can be authorized. Nor do they change the requirement for the applicant to demonstrate that their activities will not have an unmitigable adverse impact on the availability of such species or stocks for subsistence uses pursuant to the MMPA. These analyses are the key elements to maintaining the health of marine mammal species and are the premise for incidental take authorizations under the MMPA. Applicants seeking incidental take authorizations for their activities will still have to submit sufficient information to provide for compliance with all requirements of the ESA, NEPA, and the Administrative Procedure Act (APA), where they apply.

Thus, to make the requisite negligible impact determination and to comply with other environmental laws, NOAA Fisheries would still have to know what activities would be taking place, as well as when and where they would occur under the language proposed by H.R. 2693. Incidental take applications are currently evaluated based on the biological significance of the effect that their actions would have on marine mammals. This will not change under the amendments proposed in H.R. 2693. NOAA Fisheries supports these amendments.

## General Authorization Process

NOAA Fisheries appreciates the attention towards the authorization process for activities involving incidental takes in Section 14 of H.R. 2693. Nonetheless, we have several questions and concerns about the effect of this section on the incidental take authorization process. Specifically, it is not clear what is the intended interplay between this section and the bill's proposed amendments to the harassment definition. In addition, it is not clear what is the intended interplay between this subsection and subsections related to incidental take and harassment authorizations. It is also not clear how NOAA Fisheries could make the requisite negligible impact determinations and comply with other laws such as NEPA and the APA within the timelines provided. We would like to request follow-up discussions with you and your staff to better understand the intent behind this section of the bill and its effect on implementation before we provide further comment on these amendments.

## Take Reduction Plans

The incidental take of marine mammals in the course of fishing operations continues to be a large source of marine mammal mortality and serious injury. The 1994 amendments to the MMPA outlined an effective approach to monitoring and addressing the incidental take of marine mammals by commercial fisheries. NOAA Fisheries appreciates the steps that H.R. 2693 takes toward improving the approach to marine mammal bycatch reduction efforts.

## Expansion of Sec. 118 Requirements to Allow Agency to Address All Important Sources of Marine Mammal Bycatch

The Administration bill contains several amendments aimed at better managing and monitoring marine mammal bycatch. For example, the Administration bill would expand the Section 118 requirements, which outline a program for monitoring, tracking, and reducing marine mammal bycatch in commercial fisheries, to non-commercial fisheries that result in frequent or occasional incidental mortality and serious injury of marine mammals. Some non-commercial fisheries, including recreational fisheries, use gear that is identical

to that used by commercial fishermen and deploy it in the same manner. As a result, they can be an important source of incidental mortality and serious injury of marine mammals. Nonetheless, the MMPA currently only authorizes the agency to place observers and use the take reduction process outlined in Section 118 of the Act to monitor and address marine mammal bycatch resulting from commercial fisheries. We are pleased that H.R. 2693 contains amendments similar to those proposed in the Administration bill that would allow NOAA Fisheries to address all important fishery-related sources of marine mammal bycatch and to treat different fishing sectors more equitably.

#### Increased Flexibility to Establish Take Reduction Plans, Prepare Take Reduction Plans, Meet Bycatch Reduction Goals

H.R. 2693 would give NOAA Fisheries increased flexibility in the time allotted to convene a Take Reduction Team (TRT) following issuance of final Stock Assessment Reports. It would also increase the time within which Take Reduction Plans (TRPs) must meet the short-term goal of Section 118 - reducing marine mammal mortalities and serious injuries in the course of fishing operations to levels below a marine mammal stock's potential biological removal (PBR) - from 6 months to 9 months. Additionally, the bill would give TRTs additional time to submit draft TRPs to NOAA Fisheries, and the agency more time to prepare and publish proposed and final regulations implementing TRPs. We support these amendments. The amended deadlines are more achievable than the current statutory deadlines and they would not compromise efforts to conserve marine mammal stocks in a substantial way. In addition, the proposed statutory deadlines would make it easier for the agency to comply with other statutory requirements, such as NEPA and ESA.

#### Limited Authority to Monitor Bycatch in Some Fisheries

We do have a few concerns about the effect of the proposed language in Section 6 of H.R. 2693. For example, the portions of H.R. 2693 that amend the portion of the MMPA dealing with monitoring of incidental takes would limit the agency's ability to monitor Category III fisheries, those that have a remote likelihood of or no known incidental mortality of marine mammals. Several fisheries currently listed as Category III have historically taken marine mammals, or are very close to the threshold between Category III and Category II. Thus, it is important for NOAA Fisheries to have the ability to continue monitoring marine mammal bycatch in these fisheries at least on some basis to ensure that takes are kept at low levels. Additionally, there may be some unintended effects in other parts of this section that could result from different terms describing the types of fisheries in conforming amendments to this section. NOAA Fisheries is also concerned with the compressed timeline for us to develop new information for any necessary changes to the list of fisheries under this section.

#### Required Representation on Take Reduction Teams

H.R. 2693 would require NOAA Fisheries staff with specific responsibilities or expertise to serve as formal members of TRTs. While it is useful to have such expertise available to the TRT, NOAA Fisheries does not feel it is necessary to require in the statute such representation on TRTs for a number of reasons. First, the agency already has the authority and flexibility to place representatives of Federal agencies, including NOAA Fisheries, on take reduction teams when necessary. Second, TRTs as currently constructed offer a unique opportunity for public stakeholders and other entities to advise NOAA Fisheries on ways to address incidental take of marine mammals. Third, NOAA General Counsel, and NOAA Fisheries Regional Administrator representatives, scientists, and enforcement specialists are already actively involved in the take reduction plan development process and routinely attend TRT meetings, offering their expertise as needed. Requiring their membership on TRTs could pose potential problems to the viability of the process if personnel and resources are limited. Rather than making their membership on TRTs a strict legal requirement, we recommend changing H.R. 2693 to simply encourage that such staff be present and active in TRT meetings, which is already the case. If the Committee does not feel that the current practice has produced the needed level of technical expertise available to the TRT, we would be happy to work with you to resolve this issue.

#### Requirement to Reconvene TRT after Take Reduction Plan Development

H.R. 2693 would require the Secretary to reconvene the TRT and explain differences between draft and final Take Reduction Plans (TRPs) before publishing any TRP that is different from the draft plan proposed by the TRT. NOAA Fisheries believes that it is important to conduct the TRP development process in as open a manner as possible, however the proposed language in H.R. 2693 is unnecessarily restrictive, as it could require the agency to reconvene the TRT regardless of the degree of change between the draft and

proposed plans. NOAA Fisheries already provides the TRT all the scientific and other information used to develop the final regulations implementing a TRP throughout the process. Additionally, we actively encourage TRT members to comment on the proposed regulations to implement the TRT, and will often hold meetings during the public comment period to alert TRT members to the content of the final TRP.

Since TRTs do not submit their recommendations in regulatory form, some alteration is inevitable during this process. While it is possible that changes may be substantial, the vast majority of changes made to a TRT's recommendations have historically been technical in nature, and therefore, relatively minor. Under H.R. 2693, NOAA Fisheries would be required to reconvene a TRT even for minor or trivial changes to a TRP. Such a requirement could lead to unnecessary delays in finalizing and implementing a TRP, and unnecessary expense. NOAA Fisheries recommends altering this section to give the agency the flexibility to either reconvene, or otherwise consult with, the TRT regarding changes to the TRP during the public comment period soliciting comments on the proposed TRP. This would allow the agency to choose the most suitable type of communication with the TRT based on the nature of changes between draft and proposed TRPs, and would allow us to address TRT concerns with potential changes before the proposed TRP becomes final. Alternatively, the Subcommittee may wish to qualify what degree of change would require NOAA Fisheries to reconvene the TRT.

#### Pinniped Research

H.R. 2693 would require NOAA Fisheries to initiate a research program to investigate non-lethal methods to remove or control nuisance pinnipeds. We agree that such a research program would be beneficial. NOAA Fisheries issued a Report to Congress in 1999 entitled, *Impacts of California Sea Lions and Pacific Harbor Seals on Salmonids and West Coast Ecosystems*. Among other things, that study concluded that, "[T]here is a pressing need for research on the development and evaluation of deterrent devices and further exploration of other non-lethal removal measures...." While we are pleased that certain stocks of marine mammals are healthy, we recognize the problems that increasing pinniped populations pose, especially on the West Coast.

#### Captive Release Prohibition

NOAA Fisheries supports H.R. 2693's amendment clarifying that it is unlawful to release any captive marine mammal without prior authorization, with the understanding that it should not involve releases from temporary captivity or holding during permitted research; releases related to strandings; releases or disentanglements from fishing gear or line that are covered under other authorities of the MMPA; or the temporary release of marine mammals, or the progeny of marine mammals, maintained by the Department of Defense for military and research purposes if the animals involved are maintained under the authority of 10 U.S.C. § 7524. Within the scientific community, the release of marine mammals held in captivity for extended periods of time is regarded as potentially harmful to both the animals released, as well as the wild populations they encounter. Fundamental questions remain as to the ability of long-captive marine mammals to forage successfully, avoid predators, and integrate with wild populations. Unauthorized releases pose serious risks of disease transmission, inappropriate genetic exchanges, and disruption of critical behavioral patterns and social structures in wild populations. NOAA Fisheries supports this proposed statutory change, and notes that the Administration bill contains a similar amendment.

#### Stranding and Entanglement Response

NOAA Fisheries scientists must often respond immediately to marine mammal stranding and entanglement events to attempt to rescue and rehabilitate animals in jeopardy. These events provide the agency with opportunities to save individual animals, as well as to conduct close-up research on animal behavior, biology, and physiology. The MMPA currently provides for a comprehensive program to address stranded marine mammals, but does not specifically give NOAA Fisheries the authority to address marine mammals that have become victims of entanglement in fishing gear or other materials. NOAA Fisheries supports amendments contained in H.R. 2693 that would add a definition of entanglement to the Act and would require NOAA Fisheries to collect information on rescue and rehabilitation of entangled marine mammals in addition to stranded animals. We also support amendments to expressly enable the Secretary to enter into agreements with individuals to respond to entangled marine mammals in addition to stranded marine mammals. The Administration bill includes similar amendments, which will enhance stranding and entanglement response efforts.

#### Limited Authority to Export Marine Mammal Products

The 1994 MMPA amendments authorized imports of marine mammal products in conjunction with travel outside the United States by a U.S. citizen, or for purposes of cultural exchange between Native inhabitants of Russia, Canada, or Greenland and Alaska Natives. However, the provision did not accommodate corresponding exports. We support the proposed amendment in Section 4 of H.R. 2693 that would clarify that exports, as well as imports, are permissible under the MMPA subject to certain conditions. We suggest the bill clarify that exports shall be limited to noncommercial purposes in conjunction with travel outside the United States. Additionally, we note and ask the Subcommittee to consider that other sections of the MMPA could also be affected by this proposed change including, but not limited to, the legal sale of handicrafts sold by Native Alaskans intrastate but not allowed for export. The Administration's proposal contains technical amendments that ensure consistency throughout the statute. We stand ready to work with the Subcommittee on these and other issues relating to Section 4 of the bill.

#### Other MMPA Reauthorization Issues

NOAA Fisheries encourages the Subcommittee to consider several additional important reauthorization issues contained in the Administration bill. Each of these areas is described below.

#### Other Marine Mammal Bycatch Reduction Initiatives

Again, we support amendments in H.R. 2693 that will allow the agency to address marine mammal bycatch from all important fishery sources. We request that other bycatch reduction initiatives that are contained in the Administration bill are considered, in particular, the following amendments: 1) Section 409, which aims to improve information on marine mammal bycatch by directing the agency to explore new technologies to provide statistically reliable data on marine mammal bycatch levels; 2) Section 516, which directs the Secretary of Commerce to undertake a research and development program to encourage development of fishing gears and methods that reduce marine mammal bycatch; and 3) Section 402(f), which requires NOAA Fisheries to include technical liaisons with expertise in commercial fishing practices as members of take reduction teams (TRTs).

#### Harvest Management Agreements

The 1994 MMPA amendments gave NOAA Fisheries and the FWS authority to enter into cooperative agreements with Alaska Native Tribes or Tribally Authorized organizations to conserve marine mammals and co-manage subsistence use by Alaska Natives. These amendments provided a great beginning and the program has yielded some successes, evidenced by the agreements that we have reached to co-manage subsistence harvest of harbor seals, beluga whales, and other marine mammals. Nonetheless, the effectiveness of these agreements at this point relies on voluntary compliance by Alaska Natives, since there is no mechanism under the MMPA to enforce any restrictions developed through harvest management agreements for subsistence purposes. Additionally, the other provisions of the Act enable effective regulation of subsistence harvest only after designation of a marine mammal stock as depleted. The Administration bill would authorize co-management partners to develop a management plan through which cooperative agreements could be enforced. Thus, it would enable the parties to effectively manage subsistence harvest prior to a depletion finding, and ensure the greatest conservation benefit to the marine mammal stock.

#### Enhancing Enforcement

While several sections of the MMPA have been updated since the Act was first passed in 1972, some areas remain extremely outdated. One such area is the penalties that may be imposed for violations of the MMPA. Currently, individuals who violate the MMPA are subject to civil penalties of up to \$10,000 and criminal fines of up to \$20,000. These penalties have remained unchanged since 1972. While these levels may be appropriate in some instances, they have proven grossly inadequate in others, undermining effective enforcement of the Act. To enhance enforcement of the Act, the Administration bill would authorize the Secretary to impose a civil penalty of up to \$50,000 for each violation. Fines of up to \$100,000 for each criminal violation would also be available in suitable cases.

The Administration bill would also aid enforcement efforts by explicitly stating that individuals who interfere with on-board investigations by enforcement agents or submit false information are in violation of the MMPA. In addition, the Administration bill would expand enforcement capabilities by directing the Secretary to take steps to enter into cooperative enforcement agreements with states.

## Ship Strikes

Ship strikes continue to be a leading source of mortality of the critically endangered North Atlantic right whale and other large whales. Between 1970 and 2000, there were 48 known right whale mortalities, of which 16 were determined to be due to ship strikes. This number may be significantly higher, inasmuch as we were unable to attribute a cause to 13 other right whale mortalities known to have occurred during this period. The Administration bill would authorize the Secretary to use the various authorities available under the MMPA to reduce the occurrence of ship strikes of whales and to encourage the development of methods to avoid ship strikes.

## Traveling Exhibits

We remain concerned about the risks posed to cetaceans by traveling exhibits. Unlike some marine mammals, such as seals and sea lions, which spend time in both aquatic and terrestrial environments, cetaceans must remain buoyant at all times. Therefore, their health and survival depends heavily on having a continuously clean and safe aquatic environment, conditions that are difficult to maintain when transport is frequent. Because transporting cetaceans is difficult and risky, traveling exhibits would place these animals under enormous stress. The Administration bill would reinstate the ban on traveling exhibits for cetaceans, originally instituted in the mid-1970s.

## Export Prohibition

As part of a package of permit-related amendments, the 1994 MMPA amendments added a prohibition on exporting marine mammals. However, the language of this prohibition has created some difficulties in enforcement and inconsistencies with other provisions of the MMPA, especially provisions related to permits. Therefore, the Administration bill would revise the export prohibition and make corresponding changes to other provisions of the MMPA to clearly identify those instances when export, transport, sale, or purchase of a marine mammal or marine mammal product is prohibited or may be authorized.

## Conclusion

Reauthorization of the MMPA provides an important opportunity to further strengthen efforts to conserve and recover marine mammals. H.R. 2693 takes many important steps toward improving the policies that govern marine mammal conservation and recovery and I thank you and your staffs again for all your hard work and dedication to these important issues. Additionally, my staff and I look forward to future coordination with you and interested members of the public to meet the challenges that face us in better protecting marine mammals, while balancing human needs, throughout the reauthorization process.

This concludes my testimony. Thank you again for the opportunity to testify before your Subcommittee today. I would be happy to answer any questions you may have on H.R. 2693, the Administration's MMPA reauthorization bill, or any other related matters.

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